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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 131

EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,
Appellants,

vs.

LINDA WILLIAMS, et al.,
Appellees.

Motion for Leave to File Brief as Amicus Curiae on Behalf of Appellees

On Appeal From The United States District Court for the District of Maryland

INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The Legal Aid Society of Alameda County respectfully moves for an order granting leave to file a brief amicus curiae in rebuttal to that filed by the State of California in the above-entitled case pursuant to Rule 42 of the Revised Rules of this Court. Time did not permit us to secure written consent of the attorneys for the parties but we are informed they will have no objection.

The Legal Aid Society of Alameda County is a non-profit California corporation established in 1929 by members of the State Bar for the purpose of furnishing legal services to those residents of Alameda County who are unable to afford the services of a private attorney. The Legal Aid Society has a staff of attorneys with training and practical experience in the law most relevant to low-income persons, including welfare law. Attorneys on the staff of the Society represent many clients who have been denied payments under the Aid to Families with Dependent Children (AFDC) program in California by operation of the maximum grant limitations contained in California Welfare and Institutions Code Section 11450(a) and have challenged the statute in judicial proceedings now on appeal to this Court as set forth in the attached brief.

The State of California has filed a brief Amicus Curiae in this matter because of the decision herein may be dispositive of the issues presented in regard to California's statute. The Legal Aid Society wishes to reply to said brief on behalf of our clients. Our interest in this appeal and the issues we will discuss are further presented in the opening remarks of this attached brief.

For these various reasons this motion for leave to file brief as amicus curiae should be granted.

Dated: December 4, 1969.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 131

EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,

Appellants,

vs.

LINDA WILLIAMS, et al.,

Appellees.

Brief of the Legal Aid Society of Alameda County Amicus Curiae in Support of Appellees

On Appeal From the United States District Court for the District of Maryland

INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The undersigned attorneys of the Legal Aid Society of Alameda County represent the plaintiffs and their class in case of *Kaiser v. Montgomery* ..... F. Supp ..... (Civil No. 49613, ND. Cal., opinion filed August 28, 1969) in which a specially constituted three-judge court, one judge dissenting, preliminarily enjoined enforcement of California Welfare and Institutions Code (hereinafter W&I Code) Section 11450(a) and regulations promulgated there-

under. California's W&I Code Section 11450(a) places a maximum limitation on the amount of Aid to Families with Dependent Children (hereinafter AFDC) which may be paid to a recipient family without regard to the family's composition or budgeted need. In operation this statutory payment limitation has caused forty-seven percent (47%) of all AFDC recipients (plaintiffs and their class in the litigation) to receive aid payments below the amount of their state determined needs while fifty-three percent (53%) of the AFDC recipients were paid at their need levels. The three-judge court, one judge dissenting, held the statute to be in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution because this discriminatory pattern of aid payments created arbitrary and irrational classifications among recipients.

Notice of appeal of the Kaiser Preliminary Injunction was filed with this Court on September 5, 1969 by the State of California. Thereafter a Brief of the State of California Amicus Curiae in Support of Appellants was filed in this case because of the potential consequences this decision may have on *Kaiser v. Montgomery,* supra.

While the California statutes and regulations are not identical with those of Maryland, the *Kaiser* plaintiffs agree with the State of California that the statutes and regulations are very similar. Therefore, in order to protect the interests of the *Kaiser* plaintiffs and their class, the Legal Aid Society of Alameda County seeks herein to enter as Amicus Curiae in support of the argument and position of Linda Williams, et al., Appellees, in rebuttal to the specific points raised by the Brief Amicus Curiae of the State of California.

ARGUMENT

A Statute May Not Discriminate Arbitrarily in an Attempt to Protect the Public Purse.

In the Brief of the State of California Amicus Curiae in Support of Appellants, it is argued that this Court should reverse the *Dandridge* lower court[1] and in time the *Kaiser* Court, supra, thereby authorizing both states to continue to apply their contested statutory schemes. Analysis reveals that the argument of the State of California is that both it and the State of Maryland should be allowed to continue using their questioned statutory schemes solely because a contrary decision would create additional fiscal burdens. California's argument raises the specter that because of an alleged taxpayers' revolt and California's desire to conserve its fiscal resources, a decision upholding the lower courts would give California reason to eliminate the AFDC program to the great detriment of even more recipients than those presently injured by the unconstitutional practice. Therefore California seems to argue, this Court should overlook the present practices which are in issue.

California's reliance on its potential fiscal harm is poorly placed. For nearly thirty years the principle has been established that the desire for conservation of public funds does not rationalize a state's otherwise unconstitutional practice. *Edwards v. California,* 314 US 160 (1941); *Collins v. State Board of Social Welfare,* 248 Iowa 369, 81 NW2d 4 (1957); *Draper v. Washington,* 372 US 487 (1963); *Rinaldi v. Yeager,* 384 US 305 (1966). That principle has since been followed by the lower court in this case, the *Kaiser* case, supra, which concerns California,

1. *Williams v. Dandridge,* 297 F Supp 450 (D. Md. 1968), here on appeal as *Dandridge v. Williams,* No 131, October Term.

and in *Dews v. Henry*, 297 F. Supp 587 (D. Ariz. 1969). These cases properly relied on the principle which was affirmed again, in *Shapiro v. Thompson*, 394 US 618 (1969), when this Court stated:

> "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens." (at 633)

Furthermore, California's contentions that its fiscal concerns should inhibit this Court are based on incorrect premises. First, California seeks to imply that elimination of the maximum grant provision would constitute denial of the power of the California legislature to set the level of welfare payments within the State thereby producing an unadjustable financial burden on its taxpayers. The contention is not well taken. The order in the *Kaiser* case only prevents the State from acting under the present statutory scheme which distributes payments in an unconstitutional manner. The State of California has compiled cost schedules which are used to compute the state-determined needs of AFDC recipients. In compiling these figures the State has ruled that AFDC needs vary according to the particular circumstances of the family, such as size, age, sex, county of residence, et cetera. Section 11450(a) discriminates against the Kaiser plaintiffs and their class because it imposes maxima which have no relationship to those cost schedules or to the criteria they establish as relevant to the amount of AFDC payments. In operation the statute causes the Kaiser plaintiffs to receive less than their state-determined needs while other families who happen to fit the schedules are paid their full needs. The Lower

Court order carefully leaves California free to devise a different scheme within whatever budget it wishes for so long as all families are treated comparably. The order does not interfere with the legislative power to set the level of expenditures for AFDC but only its power to arbitrarily discriminate among families within that limit.

Secondly, the State contends that "judicial interference" in this matter would only confuse the legislature and therefor that this Court should abstain from deciding this issue and leave the entire controversy to legislative consideration. On the contrary, the State should realize that the judicial system is bound to issue decisions "implementing the constitutional safeguards that protect individual rights"[2] and that these "constitutional rights are to be promptly vindicated."[3] The Courts are compelled to provide judicial guidance on the constitutional limits for the State of California and all other states just as they are compelled to guarantee protection of those constitutional rights for plaintiffs in all of these cases.

Thirdly, the State concludes that affirmance by this Court of the decision below would exacerbate the inequities in public assistance. This position simply has not been shown to be true by the State's argument. The State of California has argued, however, that such affirmance would cause its own legislature to establish more harsh public assistance schemes or to eliminate such programs altogether in the future and that these acts of its legislature would exacerbate inequities. Those inequities, however, would also be subject to constitutional scrutiny should they materialize. In any event, this Court should not be induced to tolerate one unconstitutional practice simply

2. *Trop v. Dulles*, 356 US 86, 103, 104 (1958).
3. *Watson v. City of Memphis*, 373 US 526, 539 (1963).

because a proponent threatens even more questionable actions in the future.

And fourthly, California asserts that an affirmance in this case would add to California's fiscal crisis because so many of its practices have been rejected in other welfare cases and the cumulative cost of complying with constitutional mandates in every instance would be great. This Court, however, should be somewhat skeptical of the position as set forth. The State of California has not in fact begun to comply with even one of the orders it lists as creating an alleged crisis. (Cf. Affidavit of Cherie A. Gaines, Peter E. Sitkin, and Robert L. Gnaizda, Attorneys for the plaintiffs and their classes in the cited cases, attached hereto in the Appendix.) The concerns expressed by the State of California therefore are not real. Even if they were real, they would be irrelevant to the determination of the constitutional questions facing this Court because these concerns are fiscal and therefore subject to *Shapiro v. Thompson* and the other precedents discussed above.

CONCLUSION

For the foregoing reasons we adopt and join in the argument of Linda Williams for the affirmance of the lower Court and urge the rejection of the contentions raised by the State of California in its Brief Amicus Curiae.

Respectfully submitted,

THOMAS L. FIKE
Executive Director of the Legal Aid Society of Alameda County

CHERIE A. GAINES,
Chief Attorney

Appendix A

In the Supreme Court of the United States

October Term, 1969

No. 131

EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,

Appellants,

vs.

LINDA WILLIAMS, et al.,

Appellees.

STATE OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA } ss:

CHERIE A. GAINES of Legal Aid Society of Alameda County, PETER E. SITKIN of San Francisco Neighborhood Level Assistance Foundation, and ROBERT L. GNAIZDA of California Rural Legal Assistance, being duly sworn, severally depose and say:

1. That deponent CHERIE A. GAINES is the attorney responsible for conducting the case of *Kaiser v. Montgomery,* No. 49613 Civil, United States District Court for the Northern District of California, for plaintiffs and their class;

2. That deponent PETER E. SITKIN is the attorney responsible for conducting the case of *Ivy v. Montgomery,* Superior Court State of California, City and County of San Francisco No. 592705, for plaintiffs and their class;

3. That deponent ROBERT L. GNAIZDA is the attorney responsible for conducting the case of *Macias v. Finch*, U.S.D.C. Northern District of California, No. 50956, for plaintiffs and their class; and

4. A preliminary injunction had been entered and stayed in the *Kaiser* case; final judgment had been entered and appealed in the *Ivy* case and no payments have been made in compliance with the order; and only a TRO which was subsequently vacated had ever been entered in the *Macias* case. Thus, on the date of our respective signatures, the State of California was not paying any money to any of our respective clients or other members of their classes. We were further informed that the State of California does not plan to increase welfare expenditures over present levels in the immediate future to effect compliance with the judgments and orders in the *Kaiser* and *Ivy* cases.

Dated: November 28, 1969.

CHERIE A. GAINES
Cherie A. Gaines

PETER E. SITKIN
Peter E. Sitkin

ROBERT L. GNAIZDA
Robert L. Gnaizda

Subscribed and sworn to before me
this 28th day of November, 1969.

WYLENE DARDEN
Notary Public

My commission expires July 27, 1973.

No. 131

Petition for rehearing
filed on May 1, 1970.
(Not printed)